APPENDIX A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil No. 586-68

UNITED STATES OF AMERICA,
Plaintiff,

v.

FARBENFABRIKEN BAYER A. G., and CHEMAGRO CORPORATION,
Defendants.

ORDER ON MOTION TO DISMISS

1. This is an antitrust case brought by the United States against a German company, Farbenfabriken, and its American subsidiary, Chemagro, pursuant to Section 4 of the Sherman Act (15 U.S.C. § 4), in order to secure declaratory and injunctive relief. In its complaint, the government asserts that defendants entered into unlawful licensing agreements with over a hundred American firms, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). According to the complaint, such license agreements prevent competition in the sale of an important insecticide and they place unlawful restraints upon the alienation of the product by purchasers thereof.

2. On the basis of the foregoing facts, the Court finds that this action is one "affecting the patent or rights thereunder" within the meaning of 35 U.S.C. § 293. Moreover, the relief which the government

prays for constitutes "action respecting the patent or rights thereunder" which 35 U.S.C. § 293 gives this Court the same jurisdiction to take that it would have if the patentee were personally within the jurisdiction of the Court.

The motion to dismiss is, therefore, this 10th day of May, 1968, denied.

It is so ordered.

/s/ Edward M. Curran
United States District Judge

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APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 586-68

UNITED STATES OF AMERICA,
Plaintiff,

v.

FARBENFABRIKEN BAYER A. G., and CHEMAGRO CORPORATION,
Defendants.

AMENDED ORDER ON MOTION TO DISMISS

1. This is an antitrust case brought by the United States against a German company, Farbenfabriken Bayer, A.G., and its American subsidiary, Chemagro Corporation, pursuant to Section 4 of the Sherman Act (15 U.S.C. § 4), in order to secure declaratory and injunctive relief. In its complaint the government asserts that Bayer owns a patent for diethyl and that the Bayer Patent does not cover or purport to cover the use of diethyl or the manner in which it is packaged or formulated for use or sale. The complaint further alleges that Bayer has granted Chemagro an exclusive license under the patent. The complaint asserts that Chemagro has entered into more than one hundred contracts in which it agrees to sell diethyl to the vendee and to grant the vendee a license under the patent with certain restrictions and limitations relating to the use and resale of the product by

the purchasers thereof. The complaint alleges that said contracts violate Section 1 of the Sherman Act (15 U.S.C. § 1), and that Chemagro and Bayer have continued and will continue said allegedly unlawful contracts in effect unless this Court grants the relief prayed for in the complaint. It alleges that Bayer combined with Chemagro and participated in said violation by granting an exclusive license to Chemagro, by deriving revenue from Chemagro's contracts, and by its control of Chemagro.

2. On the basis of the foregoing allegations, the Court concludes that this action is one affecting the patent or rights thereunder and that this Court has the same jurisdiction to take action respecting the patent or rights thereunder as it would have if the patentee were personally within the jurisdiction of this Court (35 U.S.C. § 293).

It is, therefore, this 14th day of May, 1968,

ORDERED: that the motion to dismiss is denied; and

IT IS FURTHER ORDERED: that, in accordance with 28 U.S.C. § 1292(b), it is the opinion of the Court that the denial of the motion to dismiss involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of this litigation.

/s/ Edward M. Curran
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1967

C. A. 586-68
United States Court of Appeals
for the District of Columbia
Circuit
FILED Jun 25 1968
/s/ Nathan J. Paulson
Clerk

No. Misc. 3277

FARBENFABRIKEN BAYER, A.S.,
Applicant,

v.

UNITED STATES OF AMERICA,
Respondent.

Before: Bazelon, Chief Judge; and Burger and Robinson, Circuit Judges, in Chambers.

ORDER

On consideration of applicant's application for interlocutory appeal, of respondent's opposition thereto and applicant's reply, it is

ORDERED by the Court that applicant's aforesaid application is denied. *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 305 n. 9 (1962); *United States* v. *Cali-*

fornia Cooperative Canneries, 279 U.S. 461 (1929); *National Association of Real Estate Boards* v. *United States*, 85 U.S.App.D.C. 165, 176 F.2d 631 (1949).

Per Curiam.

Circuit Judge Burger did not participate in the foregoing order.